



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of Community Planning and Development

Special Attention of:

All Community Planning and Development Directors

Notice CPD-03-03

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Supersedes:

Cross References: 24 CFR 570.208(a)

SUBJECT: Transition Policy for Low/Mod Income Summary Data Updates for
Fiscal Year 2003
Community Development Block Grant Program -- Entitlement Grantees

This Notice describes policy guidance for using the updated Low/Mod Income Summary Data (LMISD) resulting from the 2000 Census that has been posted on HUD's website. The posting will include updated data for all grantees, including new Community Development Block Grant (CDBG) entitlement metropolitan cities as well as urban counties with new configurations. The new LMISD will also reflect modifications based on the exception authorized to "uncap" low- and moderate-income levels in 10 Metropolitan Statistical Areas (MSAs) pursuant to Section 590 of the Quality Housing and Work Responsibility Act of 1998 (title V of Public Law 105-276, 42 USC 5301 note).

The LMISD are the data that grantees should use for official determinations of activity compliance with the low- and moderate-income area benefit national objective, in accordance with the Housing and Community Development Act of 1974, as amended, and the CDBG regulations. To the fullest extent feasible, the most recently available decennial census information is required to be used by the regulations at 24 CFR 570.208(a)(1)(vi). Because timely use of this data is required by regulation, any changes to the policies delineated herein will be evaluated on a case-by-case basis. Therefore, if your office believes that relief from the transition policy is necessary, please consult with the Entitlement Communities Division before taking any actions.

Distribution. Each Field Office is responsible for distributing this transition guidance to each grantee within its jurisdiction. The LMISD were posted on HUD's website on February 28 and an e-mail was sent to all Community Planning and Development (CPD) Directors notifying them that the data has been posted. (The website is www.hud.gov/offices/cpd/systems/census/lowmod/index.cfm.) Distribution of this Notice should be completed within two weeks after Field Office receipt.

Effective Date for Updated LMISD. The Department will not consider the LMISD referenced in this Notice to be in effect until 60 days after the grantee's receipt of this Notice from HUD, or 60 days after a grantee's program year start date for program year 2003, whichever is later, but in no case shall the effective date be later than September 30, 2003.

Transition Policy. If the new LMISD data shows that an area no longer qualifies under 24 CFR 570.208(a)(1), starting and/or finishing activities in a program year should be governed by the following guidance:

- Defined Service Areas. Area benefit activities for which a specific service area had been identified based on data derived using the prior LMISD and for which CDBG funds had already been obligated as of the effective date of the new LMISD may continue to qualify under the previous data, but only to the budgeted amount for the activity as of the effective date. Amounts that need to be expended for such activities beyond the budgeted amount and all area benefit activities initiated after the effective date of the new data must be based on the new LMISD.

Budgeted: For these purposes, "budgeted" means the total amount identified for the activity in the Integrated Disbursement and Information System (IDIS) or in the applicable Consolidated Plan Action Plan (or amendments, if applicable) as of the effective date of the new LMISD. However, this allowance extends only to those area benefit activities with a clearly defined service area. An amount that was included in a Consolidated Plan Action Plan or IDIS for an activity described as "an economic development loan to a commercial business" would not be considered "budgeted" and, therefore, would not meet this test. But an economic development loan with a specified service area, e.g., "economic development loan to ABC Groceries, Inc., serving the Hilltop neighborhood," would be considered budgeted.

Obligated: As defined in 24 CFR 85.3, obligation means the amount of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

- Pre-award Costs. For those area benefit activities that involve authorized pre-award costs, CDBG funds may be used to reimburse the costs previously incurred as long as the activity's service area still meets the low- and moderate-income qualifying standard based on the LMISD in effect at the time the costs were incurred.
- Acquisition of Real Property. For area benefit activities using prior LMISD that include the acquisition of property with CDBG funds, the development of the property may be completed using the prior LMISD if CDBG funds were obligated for the acquisition prior to the new data being made effective for the grantee and the use planned for the property at the time of acquisition does not change. If the planned use changes after the new LMISD effective date, compliance for the area served by the new activity (use) with the low/mod area benefit national objective must be based on the new LMISD.

- Cost Overruns. If funds have been obligated for an activity and there is an unexpected increase in the cost of an activity using prior LMISD data and that cost increase does not change the scope or purpose of the activity, the grantee may cover the cost overrun, even though it was not included in the amount budgeted. However, enhancements (e.g., improvements that change the scope or purpose of the activity) may only be funded if the activity will meet the low- and moderate-income area benefit national objective using the new LMISD.
- Activities Involving Loan or Grant Programs. Certain activities may be designed to meet the low- and moderate-income area benefit national objective criterion, but involve the provision of direct financial assistance to individuals or businesses in that area. By far, the most common such situation would be an activity making loans or grants to businesses that provide good or services to residents of a neighborhood, where at least 51 percent of the residents are low- and moderate-income. Application of the new LMISD to such activities will follow the same principal as is required under the low- and moderate-income housing and jobs national objective criteria: each separate provision of assistance must meet the area benefit national objective as of the date the assistance is obligated to each business or individual.
- Amendments. Following the effective date for use of the new LMISD, amendments to budgeted activities that increase the amount of funds budgeted for the activity or that change the service area of the activity, must qualify under the new data. Also, an activity for which funds were budgeted but no funds had been obligated by the effective date of the new LMISD must qualify under the new LMISD data.

Examples of activities applying the new and old LMISD:

1. A grantee has budgeted \$100,000 for construction of a recreation center as a public facility that will serve a low/mod area based on prior LMISD. Prior to the effective date of the new LMISD for the grantee, \$20,000 was obligated. Because funds had been obligated, the activity may continue to qualify under the prior LMISD and the remaining \$80,000 may be used to complete construction.
2. A grantee budgeted \$150,000 for acquisition of property and construction of a neighborhood recreation center (on the property) that, based on prior LMISD, will serve a low/mod area. The acquisition was completed prior to the effective date of the updated LMISD, but the contract for construction had not been let. Because the grantee completed the acquisition (obligated funds) prior to the effective date of the new LMISD, the activity may be completed using the prior LMISD, as long as the property is used for the construction of a neighborhood recreation center as planned.
3. An activity is listed in the Consolidated Plan Action Plan as “economic development loans to businesses located in and serving the Hilltop neighborhood,” which is a qualified low/mod area based on the prior LMISD, and one loan had been made (obligated) prior to the grantee’s effective date of the new LMISD. Because each loan would be considered a separate activity, subsequent loans made under this economic development program could only qualify if the service area is still eligible based on the new LMISD.

If you have any questions about the guidance provided in this Notice, HUD field staff should contact the Entitlement Communities Division on (202) 708-1577; entitlement grantees should contact their HUD field offices.